

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MELISSA BROCK)	
Claimant)	
VS.)	
)	
INTERCONNECT DEVICES, INC.)	Docket No. 217,547
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier appealed the May 17, 1999 Award entered by Administrative Law Judge Robert H. Foerschler. The Appeals Board heard oral argument in Kansas City, Kansas, on October 19, 1999.

APPEARANCES

Luis Mata of Kansas City, Kansas, appeared for the claimant. John M. Graham Jr., of Overland Park, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a repetitive use injury to both upper extremities. For purposes of this claim, the parties selected February 1, 1996, as the alleged accident date. Judge Foerschler found that claimant permanently injured her upper extremities while working for the respondent and awarded claimant a 12 percent permanent partial general disability, which was based upon the functional impairment rating.

The respondent and its insurance carrier contend the Judge erred. They argue that the medical evidence indicates that claimant did not permanently injure herself at work.

In the alternative, they argue that claimant has proven a right upper extremity injury only and, therefore, the award should be limited to one for a scheduled injury.¹

The only issues before the Appeals Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of her employment with the respondent?
2. If so, what is the nature and extent of the injury and disability?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. The claimant, Melissa Brock, began working for Interconnect Devices, Inc., in July 1995 assembling small testing devices. In February 1996, Ms. Brock noticed swelling in her right hand. She immediately reported the symptom to her supervisor and was referred for medical treatment. As Ms. Brock continued to work, she then developed additional symptoms in her right arm and began to have similar symptoms in her left hand and arm.
2. The Appeals Board affirms the Judge's conclusion that Ms. Brock sustained personal injury by accident arising out of and in the course of her employment with Interconnect Devices, Inc. Ms. Brock's job required her to constantly use her hands to assemble small parts, which the Board finds to be the offending activity.
3. Although Ms. Brock had tendinitis in her hands while working for another company in either 1990 or 1991, after a period of physical therapy those symptoms resolved except for an occasional twinge of right wrist pain. The Appeals Board finds that Ms. Brock's condition in both upper extremities is now worse and that she is now much more restricted in her activities due to the repetitive use injuries that she sustained while working for Interconnect Devices, Inc.
4. Considering all of the evidence, the Appeals Board finds that Ms. Brock's functional impairment rating falls somewhere between zero and 23 percent. Dr. James Hopkins diagnosed cumulative trauma disorder in both upper extremities, tendinitis and epicondylitis in both elbows, and capsulitis in both wrists. Conversely, Dr. Bradley W. Storm testified that Ms. Brock did not injure herself but that she was merely physically unable to do the assembly work assigned to her. Dr. Storm diagnosed Ms. Brock's problem as "work intolerance." Dr. Lanny W. Harris, whom the Judge appointed to perform an independent medical evaluation, thought Ms. Brock's symptoms were probably caused by fibromyalgia,

¹ See K.S.A. 44-510d.

which was not related to her work. Therefore, Dr. Harris believed Ms. Brock did not have any impairment secondary to her work.

5. Considering the various medical opinions, the Appeals Board affirms the Judge's conclusion that Ms. Brock has sustained a 12 percent whole body functional impairment as a result of her work-related injuries. That rating is an approximate average between the 23 percent whole body functional impairment rating provided by Dr. Hopkins and the zero percent rating provided by Dr. Storm.

6. The Appeals Board adopts the findings and conclusions set forth in the Award.

CONCLUSIONS OF LAW

1. The Award should be affirmed.

2. Since developing her work-related injuries, Ms. Brock has left the employment of Interconnect Devices, Inc., and now works for another employer earning a comparable wage. Therefore, Ms. Brock claims a permanent partial general disability for her permanent functional impairment.

3. Because injuries to both upper extremities constitute an "unscheduled" injury, Ms. Brock's entitlement to permanent partial general disability benefits is governed by K.S.A. 44-510e, which provides:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

4. The Appeals Board is persuaded by Dr. Hopkins' opinion that Ms. Brock sustained cumulative trauma disorder. As indicated in the findings above, Ms. Brock has a 12 percent whole body functional impairment as a result of the work-related injuries that she sustained while working for Interconnect Devices, Inc. Therefore, her permanent partial general disability is 12 percent.

AWARD

WHEREFORE, the Appeals Board affirms the May 17, 1999 Award entered by Judge Robert H. Foerschler.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Luis Mata, Kansas City, KS
John M. Graham Jr., Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director